

### Personal Inland Marine

REVIEW REQUIREMENTS	REFERENCE	COMMENTS
<b>FORMS</b>		
<b>Action Against Us</b>	LRS 22:655 B	LRS 22:655 B grants an injured person or their legal representatives a right of direct action against the insurer under a liability policy. A policy may not limit an injured party's right of direct action by allowing suit only once the amount of liability has been finally determined by trial or settlement. The Department has approved the following language: "A person or organization may bring a "suit" against us including, but not limited to a "suit" to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of the Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative."
<b>Actual Prejudice Rule</b>		Louisiana follows the actual prejudice rule, which allows an insurer to reduce the coverage only by the amount that the insured's action or inaction has prejudiced the insurer in the presentation of a defense or caused the insurer a loss. A party in good faith, except in a very clear case, cannot lose his rights against an insurer through indifference or lack of diligence.
<b>Applications</b>	LRS 40:1424 B	All applications for insurance and all claim forms shall contain a statement permanently affixed to or included as a part of the application or claim form, that clearly states in substance the following: "Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison." This also applies to renewal and supplemental applications.
<b>Appraisal</b>	LRS 22:629 A	An appraisal provision that limits the parties' ability to seek other remedies cannot be approved. A mandatory binding appraisal is similar to mandatory binding arbitration because it removes a matter in dispute from the jurisdiction of the courts.
<b>Arbitration</b>	LRS 22:629 A	LRS 22:629 A prohibits an insurance contract issued for delivery or delivered in Louisiana from containing a stipulation, condition, or agreement that deprives the courts of Louisiana of the jurisdiction of action against the insurer. Binding mandatory arbitration clauses are not allowed because they deprive the courts of their right to hear a case.
<b>Bankruptcy Provision</b>	LRS 22:655	All liability coverage forms must contain provisions that state that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy.
<b>Blank Endorsements</b>	LRS 22:620.A.(1)	Blank endorsements are not allowed or approved in Louisiana.
<b>Cancellation &amp; Non-renewal</b>	LRS 22:636	The Louisiana Insurance Code contains specific requirements for notice of cancellation and non-renewal of property and casualty policies. For certain types of insurance, cancellation is allowed only for the reasons permitted by statute. All property and casualty policies may be cancelled for nonpayment of premium with ten day written notice. Automobile, commercial, and homeowners policies have different statutory requirements. For policies other than these, the provisions of LRS 22:636 control. All lines not specified below follow the following: Cancellation: 30 days [22:636.A.(1)(a)]; Nonpayment: 10 days [LRS 22:636.A.(4)]; Nonrenewal:30 days.
<b>Conditions for Filing a Lawsuit</b>	LRS 22:629	No insurance contract issued for delivery in Louisiana and covering Louisiana subjects or residents, or to be performed in Louisiana, shall deprive the courts of this state of jurisdiction of an action against an insurer. Nor can a policy contain provisions requiring it to be construed according to the laws of another state.
<b>Condition Precedent</b>		The term "condition precedent" is in direct conflict with the actual prejudice rule. An insurer can require certain duties of the insured, but his liability is reduced only to the extent that the insured's action or inaction actually prejudiced the insurer.

<b>Deductibles and Self-Insured Retention</b>	LRS 22:621(3)	The term "Self-Insured Retention" in lieu of the term "Deductible" is not acceptable for use in a primary policy issued in Louisiana. The switch from "deductible" to "self-insured retention" is likely to prove ambiguous, confusing and/or misleading to most insured's who are familiar the meaning and characteristics of a deductible but not with a self -insured retention. Deductibles cannot be changed to self -insured retentions by endorsement. This Department views policies that are subject to deductibles as primary coverage, which requires the insurer to stand in the place of the insured, and defend him against claims. However, it is the position of this Department that policies subject to self -insured retentions are excess coverage. Since the excess insurer's purpose is to provide coverage in the event the insured's primary coverage is insufficient to cover a loss, an excess insurer would not be required to defend the insured as the primary insurer should provide a defense. Because of these fundamental differences in the nature of primary and excess coverage, endorsements that state the deductible is changed to a self-insured retention are not allowed. Furthermore, provisions in excess contracts that prohibit the insured from having insurance coverage for the self -insured retention are not allowed. If such a provision were allowed, the insured could possibly have primary coverage that excludes defense costs. It would not be in the public's best interest to approve such contracts. It is a common and reasonable expectation of insured's that a provider of primary coverage will defend him against claims.
<b>Defense Costs</b>		An insurer may not include "cost of defense" within the limits of liability" in liability policies issued in Louisiana, except or certain limited markets, namely, Directors and Officers, Architect, Engineers, Accountants and Employment Practices. Pursuant to LRS 22:620 E other acceptable exemptions would be determined on a case-by-case basis. Policies providing coverage for bodily injury or property damage do not fall within the exceptions to the general prohibition against defense within limits. It has been the long-standing policy of the Louisiana Department not to approve defense cost being shifted from the insurer to the insured regardless of how they are categorized. Regulation 41 was a limited exception to the general prohibition of shifting defense cost to the insured. The repeal of that regulation did not work as a repeal of the general prohibition.
<b>Electromagnetic Radiation Exclusions</b>		The Louisiana Department of Insurance does not allow the usage of electromagnetic radiation exclusions in policies written in Louisiana. Pursuant to LRS 22:620 E any exceptions would be determined on a case-by-case basis.
<b>Filing Standards</b>	LRS 22:624 B (1-9)	All policies shall specify and conform to the items listed in LRS 22:624 B (1-9).
<b>Form Number</b>	LRS 22:624 B (9)	Form numbers are to be in the lower left hand corner of every page.
<b>Fraud Statement</b>	LRS 40:1421. B.	All applications for insurance and all claim forms provided and required by an insurer or required by law as a condition of payment of a claim shall contain a statement, permanently affixed to or included as a part of the application or claim form, that clearly states n substance the following: "Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison."
<b>Fully Earned Premium</b>	LRS 22:636. D. LRS 637	The Louisiana Department will not approve policies that provide for a fully earned premium, unless the policy is not cancelable. If the policy allows for cancellation by either the insurer or the insured, then the insurer is bound to return the unused premium in accordance with the cancellation statutes.
<b>Judicial Interest</b>	LRS 13:4203	As an insurer you are liable for judicial interest from the date of judicial demand. Any policy provision which attempts to limit the liability insurer's liability for legal interest from the date of judicial demand contravenes the public policy of LRS 13:4203.
<b>Like Notice of Cancellation</b>	LRS 22:636 A (2)	Like notice of cancellation must also be delivered or mailed to each mortgagee, pledgee, or other known person shown by the policy to have an interest in any loss, which may occur.
<b>Loss Payee Agreement</b>		Unless there has been secretion, conversion, or embezzlement by the insured, the loss payee's interest is always protected.
<b>Loss Payment/Settlement</b>	LRS 22:658	An insurer is required to pay the amount of any claim due to an insured within thirty days after receipt of satisfactory proof of loss from the insured or any party in interest. Agreement or an appraisal award may not be a prerequisite to payment of loss. In the event of a dispute, the insurer must unconditionally tender to the insured the undisputed portion of the claim. The fact that the insurer and the insured have not reached an agreement regarding the amount of the total loss does not entitle the insured to delay payment beyond 30 days subsequent to receipt of proof of loss.
<b>Minimum Premium</b>	LRS 22:636 LRS 22:637	If the insured cancels, the insurer may charge a minimum premium. If the insurer cancels, the return premium is calculated on a pro rata basis with no minimum premium, and this must be clearly stated in the policy.

<b>Name of Insurer</b>	LRS 22:624. B. (1) LRS 22: 630	The policy must be executed in the name of the insurer, which must clearly appear on the policy.
<b>Overly Broad</b>		Several policies contain the following language: "We will not pay for loss or damage caused directly or indirectly by any of the following. All loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss" or "We do not pay for a loss if one or more of the following excluded perils apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded peril". The Department feels that this type of language is too broad and might be used to deny a claim for loss or damage due to a covered peril that occurs in conjunction with an excluded peril. Coverage should be provided for any covered peril that precedes an excluded peril, occurs concurrently with an excluded peril, or occurs as a result of an excluded peril.
<b>Partial Subordinate Subrogation Rule</b>	LA CC 1426	When the injured party is also the insured, the insurer's right to recover is not triggered until the injured insured has been fully compensated. Hence, all subrogation clauses regarding uninsured motorist coverage and medical payments for the insured must contain language stating that the insurer's subrogation rights are secondary to the insured's right to be fully compensated. The following language is preferred: "If we make any payment under this policy and the person to or for whom payment is made has a right to recover damages from another, we shall be subrogated to that right. However, our right to recover is subordinate to the insured's right to be fully compensated.
<b>Pollutants (Definition)</b>		The definition of "pollutants" cannot be drafted so broad as to encompass things, such as asbestos or lead and pesticides or herbicides, which are products and not pollutants. They do not fit within the definition of pollutants. Further, electromagnetic and sound emissions should not be defined as "pollutants" in policy forms.
<b>Pollution Exclusion (Liability Only Not Property)</b>	Directive 137; Advisory Letter 97-01	If the nature of the coverage does not support the use of a standard pollution exclusion, the policy will not be approved. As a general rule, absolute or total pollution exclusions are not approved unless the company can show that there is a real exposure for "superfund" type liability. Exclusions that are limited to government imposed clean-up costs, are acceptable regardless of the type of business being insured.
<b>Premium Return</b>	LRS 22:636 LRS 22:637 B LRS 22:637.1.	LRS 22:637 B provides that within 30 days following cancellation by the insured, the insurer shall pay the insured any unearned portion of any premium paid on the policy "as computed on the customary short rate or as otherwise specified in the policy." However, the insured is liable to the insurer for premium for the period during which the policy was in force. Although an insurer may charge a reasonable fee for cancellation by the insured, the method they use to determine such a fee must be clearly specified in the policy. LRS 22:636.6A requires that any earned premium for the period of coverage extended beyond the expiration date of the policy is to be considered pro rata based on the rate of the previous year.
<b>Premium Changes</b>	LRS 22:636.4.E. (1)	Under LRS 22:636.4.E.(1), an insurer is required to mail or deliver a written notice of any change in the rate, deductible or limits of coverage at least 30 days prior to the expiration date of the policy.
<b>Recovery Expenses</b>	LA CC 1826	An insurer may be reimbursed for its recovery expenses incurred in recovering property that was the subject of a claim, as long as the insured is first made whole.
<b>Representations and Warranties</b>	LRS 22:619 A LRS 22:636 LRS 22:636.4	Representations and warranties made in the negotiation of the contract cannot be deemed material and misrepresentations cannot void the policy or defeat coverage unless: (1) the statement is false, (2) it was made with the intent to deceive and (3) it is material to the risk. For an insurance policy to be considered void in Louisiana, the fraud or misrepresentation must be made with the intent to deceive when applying for coverage (i.e., the insured lied with the intent to deceive on his application and/or when negotiating his insurance contract). Fraud or misrepresentation with the intent to deceive made after the contract is formed is grounds to deny coverage and is a reason for cancellation, but the insurer must supply coverage for legitimate claims until the cancellation is effective.
<b>Subrogation/Loan</b>		Language that equates the insurer's payment for a covered loss, which may be recovered from a third party responsible for the loss, with a loan will not be approved. Subrogation rights do not create a debt to be paid by the insured. All language that suggests that the insurer's payment for a covered loss is an advance payment in the form of a loan to the insured is not acceptable.

<b>Subrogation/Trust Agreement/ Right of Reimbursement</b>	LA CC 1826	An insurer's interest in the recovery of payments is subordinate to the full recovery of damages by the injured person. See LA CC 1826. Language that requires the insured to first make a dollar reimbursement or to hold money in trust is not approvable. The following language is preferred: "If we make any payment under this policy and the person to or for whom payment is made has a right to recover damages fro another, we shall be subrogated to that right. However, our right to recover is subordinate to the insured's right to be fully compensated."
<b>Ten Point Type</b>	LRS 624.B. (8)	A policy must be in at least 10 point type.
<b>Underground Storage Tanks</b>		Defense cost for underground storage tank liability may be capped, so long as the defense costs are outside the limit of liability.
<b>Unreasonable Time Limits</b>		Inaction on the part of the insured cannot be grounds for forfeiture of coverage, unless the insurer proves actual prejudice because of said inaction. Therefore, language that places unreasonable time limits on the insured will not be allowed. This problem can be corrected by adding the following language: "within 'X' days/hours, or as soon thereafter as practicable" wherever a duty is imposed.

